

Our Ref: NJ/Forest Policy 2020/Submissions/20/1
Your Ref: TBA

7 July 2020

Principal Secretary,
Ministry of Environment and Forestry
NHIF Building, 12th Floor
Nairobi, Kenya

Dear Sir/ Madam,

REF: SUBMISSIONS ON THE DRAFT FOREST POLICY 2020

We write in response to your call for submissions on the Draft Forest Policy 2020 through the Standard Newspaper advertisement dated **9.06.2020**.

Attached to this letter please find our detailed comments and proposals which we hope will provide valuable insights.

We look forward to hearing back on the same.

Sincerely,



Maryama Farah
Senior Program Officer
maryama@naturaljustice.org

Submissions on the Draft Forest Policy 2020

| No. | Paragraph/Page & Sub-heading | Proposal | Justification |
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| 1 | Paragraph 1.1.6 at Pg. 1 (Background) | We propose the inclusion of an acknowledgement that forest communities equally play a vital role in forest conservation through their sustainable cultural practices and ancestral attachment. | <p>Whereas we recognize the critical contributions of forests and biodiversity to communities living around them, we are equally cognisant of the significant roles that communities especially indigenous and local communities play in conserving forests.</p> <p>Several research studies have affirmed this position by finding that most of the world’s remaining biodiversity hotspots are within territories occupied by indigenous and local communities.</p> <p>The African Court on Human and People’s Rights also affirmed this position through its judgement on the Ogiek Case in which it recognised that the Ogiek are an indigenous people and have a critical role to play in safeguarding their local ecosystems and in conserving and protecting their ancestral lands and natural resources.</p> |
| 2 | Para 1.1.7 at Pg.8; Para 1.1.13 at Pg. 9, Para 1.2.3 & 1.2.4 at Pg. 1; 1.4 at Pg. 12, Para 2.1.1 at Pg 15; Para 2.1.4 at Pg. 15; Para 2.2.1 at Pg. 15; Para 2.2.4 at Pg. 16; Para 2.2.5 at Pg. | In drafting these sections, the Ministry of Environment ought to also recognise and take into consideration the real and major drivers of biodiversity loss which includes unsustainable development projects by Multinational Corporations (MNCs) and | The sections, in our view, are drafted in a way that portrays indigenous communities, forest dwelling communities and communities neighbouring forests as the main cause of forest degradation. As mentioned in the policy, this is attributed to factors such as population growth, land |

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| <p>16; Para 2.2.6 at Pg. 16; Para 2.2.9 at Pg. 16, Para 2.2.10 at Pg. 16; Para 2.3.2 at Pg. 17; Para 2.3.3 at Pg 17; Para 2.12.1 and Para 2.12.2 at Pg. 24.</p> | <p>government agencies. For instance, forest fires have been associated with KFS burning charcoal from charcoal traders. Other biodiversity is lost through the fires from eviction activities (burning community houses/shelters and the forest by extension)</p> | <p>use change, governance challenges, encroachment of forests and illegal extraction of timber and charcoal among other issues. However, there is a wide recognition internationally that the real drivers of biodiversity loss have been unsustainable development projects as well as unsustainable conservation initiatives mainly associated with fortress conservation.</p> <p>In light of the government's ambitious development goals and economic blueprints including the Vision 2030 and the Big Four Agenda, this policy should go further and assess how the implementation of these programs could affect and impact the protection and conservation of forests. That is because, we have already witnessed the huge tracts of land being acquired for projects such as the Lamu Port South-Sudan Ethiopian Transport Corridor (LAPSSET) Project, the Standard Gauge Railway (SGR) and recently the Nairobi Expressway Project whose implementation often requires the clearance/encroachments of forests and biodiversity. This may eventually impact Kenya's ability to realise the 10% forest cover in the future.</p> <p>In the coastal areas as well, many projects have led to the loss of mangrove forests. Malindi is a good example where the establishment of salt farms have</p> |
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| | | | led to the destruction of mangrove forests under the environmental regulator’s watch. |
| 3 | Paragraph 1.1.15 at Pg. 9 (Background) | In addition to the Sustainable Development Goals (SDGs) included in this paragraph, we propose the incorporation of SDG 16 on promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. | We echo the policy’s acknowledgement of the governance challenges experienced in the forest conservation and management sector in Kenya which this SDG seeks to address. Most importantly, it emphasizes and encourages the adoption of a human rights based, inclusive and participatory approach to natural resource conservation and management which is key to the successful implementation of this policy. |
| 4 | Paragraph 1.5 at Pg. 12 (The Formulation Process) | <p>We recommend the inclusion of more information on the consultation process including the number of meetings held, the stakeholders consulted during the development of the policy, the period taken and how the inputs by various stakeholders were incorporated into this draft document.</p> <p>Secondly, we propose the inclusion of an additional theme on the need to conduct a comparative study on forest conservation and management practices in other countries with best practices.</p> | The rationale is to ensure that the process is as inclusive as possible and transparent as well given the national importance of this document to the wider public. As such, the degree and threshold of effective public participation process in this process is high. For such a document, it is expected that stakeholders from all sectors across all the 47 counties in Kenya are afforded reasonable opportunities to participate and the input considered. The impacts of the Covid-19 pandemic places a further obligation on the Ministry to take deliberate steps that will facilitate the participation of all people especially those in marginalised areas due to the increased challenges they are currently facing. |

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| | | | Regarding the comparative study, we feel that it would assist the Ministry draw lessons from countries that have managed to conserve forests. This would help Kenya develop best practices that will boost forest conservation and management. |
| 5 | Para 1.6 at page 13 and 14 (Legal Frameworks, policies and initiatives.) | We propose more analysis on the international, regional and national laws. Specifically on what the policy borrows from the laws in terms of forest strategies. | The policy will inform how the county governments will be formulated as well. For the benefit of the county government and also for communities to know exactly what it means to link this policy to any other superior law, the analysis will be critical. Stakeholders holding the government accountable on the international laws will be made effective by their knowledge on the specific aspects borrowed from the laws to this policy. |
| 6 | Para 2.3 at page 19 (Land Tenure and Land use) | Include the structural difficulties with the state's control and ownership of all valuable forests across the country. This should guide in the need to have new ways of doing things. | We note that national ownership of forests is interpreted as free for all-open access. This does not structurally give citizens their roles in conservation of the said forests but leave loops holes for mismanagement of natural resources. The policy also recognises the corruption associated with the KFS. |
| 7 | Para 2.7.10 at Pg. 20 (CFAs vs Community Land Act 2016) | Other than “the existence of multiple institutions whose roles are not harmonized can result in conflict...”, the policy should go ahead to propose or give suggestions on how forest indigenous communities (who | There is a need for the policy to look positively especially towards the new law. It is clear from the draft that many challenges have been evident with the CFA model and PELIS especially on indigenous forests. Forest Indigenous communities who have for a long time challenged the |

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| | | CFAs do not work for) are included in the policy. | above models need to be given room as an institution to protect their territories and the natural resources therein. This with the aim of making sure that all stakeholders especially communities participation is not affected by the presence of many institutions. |
| 8 | Para 3.2 at Pg. 26 | We propose the inclusion of additional policy objectives that separately speak to the participation of women and indigenous communities; access and benefit sharing as provided for in Para 4.1 (k) and a human-rights based approach to forest conservation and management. | Para 2.7.9 at Pg. 20 expressly acknowledges the marginalization of women, youth and marginalised communities and persons with special needs in sustainable forest management activities. Therefore, the Constitution of Kenya calls for affirmative action to ensure that these groups are involved in governance in every sector and level. To ensure that this occurs, it is important to incorporate specific objectives and goals that aim to ensure their involvement. Issues around access and benefit sharing as well as human rights approaches to decision-making are cross cutting but very important issues in the management of natural resources. |
| 9 | Para 3.3 at Pg. 27 (Guiding principles) | All national values and principles of governance listed in Article 10 of the Constitution should also form part of the guiding principles. This includes, but not limited to equity, human rights, non-discrimination and sustainable development. | Article 10 (1) of the Constitution stipulates that the national values and principles of governance bind all State organs, State Officers, public officers and all persons. |

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| <p>10.</p> | <p>Para 4.2 at Page 30 (Indigenous forests)</p> | <p>a) We propose an additional policy statement on the involvement of forest indigenous communities being key stakeholders in the conservation of their forests.</p> <p>b) We also propose that policy statement (e) be worded further to clarify what the statement means as we find it not clear enough.</p> <p>c) We further propose a policy statement that restricts the clearance of Indigenous Forest land to accommodate farmers through the PELIS system. This is an emerging event recently conducted by KFS in Menengai Forest, Nakuru County where 1500 acres of indigenous trees have been cut down and is set to be replaced by eucalyptus (See, Standard Newspaper-24.06.2020).</p> <p>There is a need for the KFS to explore non-destructive means of controlling forest fires in indigenous forests, as clearing of forest for exotic trees and PELIS (a relatively abused scheme) that contributes to declining indigenous forest is not the right</p> | <p>As acknowledged in this policy, indigenous forests have indigenous communities attached to them. Conservation of such areas and forests will therefore be effective with their full participation in the conservation. This would be most helpful if their indigenous knowledge and practices that conserve, control of forest fires can be harnessed.</p> |
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| | | strategy to solve the issue. | |
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| | Para 5.1 at Pg 33. (Urban forests and Road-side tree-planting) | <p>The ongoing expansion and development of new infrastructure projects and urban sprawls have seen the clearance of road-side tree planting and the encroachment of urban forests.</p> <p>We therefore recommend the collaboration of the Ministry and institutions like KURA, KeNHA particularly in policy statement (e) *rephrase.</p> | <p>As indicated in the document, trees provide a cool and serene environment, act as natural filters and contribute to the general well-being of society besides improving the microclimate of cities and towns.</p> <p>Government institutions both in development and conservation sectors need to work hand in hand to ensure the protection of the now scarce urban forest and road-side trees.</p> |
| 11. | Para 7.1 at page 37 (Forest education and training) | In the respect of the richness in indigenous knowledge among many local and indigenous communities, the policy should acknowledge and give room for such to inform the education and training. | This is meant to restore most of the traditional practices that play a major role in the conservation of forests. It would also be a way to appreciate the existing practices like bee keeping, preservation of sacred sites and the taboos especially those associated with the use of medicinal plants and other trees which are often at the risk of extinction. |
| 12. | Para 7.2 (Forestry Research and Development) | We recommend the express considerations and intentions of applying participatory models of research that are not just result-oriented but build local communities and institution's capacities on sustainable forest conservation and management. | Undertaking multi-disciplinary policy research predominantly using the participatory methodologies of research has long term effects since communities are involved and empowered, thereby achieving sustainability. |
| 13. | Para 8.1 at Pg. 38 (Institutional Framework) | There is a need to develop a policy statement that commits to the strengthening of traditional governance systems | The Constitution of Kenya recognizes the significance of traditional governance structure through its provisions on cultural rights as well as Alternative |

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| | | especially among forest and indigenous communities. | Dispute Resolution mechanisms which include traditional methods. |
| 14. | Para 8.2 at Pg. 40 (Legal Framework) | The policy should also be aligned with the provisions of the Constitution and international frameworks and best practices. | This is meant to avoid any conflicts between the legal regimes and to ensure that the policy conforms with all other laws. |
| 15. | Para 8.3 at Pg. 41 | <p>Besides finding ways of mobilizing resources, the government should also endeavour to ensure that financial resources gathered for the management of forests trickle down to the community level through Community Forest Associations (CFA) and other models acceptable by forest indigenous communities.</p> <p>Furthermore, market-based mechanisms of forest conservation e.g. REDD+ [highlighted in policy statement 8.3 (j)] has been faced with significant socio-political risks, hindering the real conservation participants from realizing the win-win balance of their conservation efforts and socio-economic development.</p> <p>We therefore acknowledge the effort set out in 8.2 (f) but further recommend the following considerations for the Market-based mechanism and the Green Climate Fund; as highlighted in various studies:</p> <p>a. Transparency and information sharing on</p> | The main reason why the country receives a lot of conservation funding and less results is because of the little efforts put in place to ensure that the funding really gets to those doing the real work. Through this policy, such loopholes can be sealed and ensure that the communities' participation is made more effective by trickling down the funding to them. Of importance here is how such a process is done. This should be through community agreeable models which then will communicate better results. |

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| | | <p>market-based mechanism for conservation</p> <p>b. Creation of accountability and grievances mechanisms</p> <p>c. Deepen participation and deliberative democratic processes.</p> | |
| 16. | Para 9.3 at Pg. 43 | We propose an additional requirement in policy statement (d) to provide for the inclusion and effective participation of stakeholders in the development of reports on the implementation of international obligations at the national level. | Reports on the implementation of Kenya’s obligations under international law should be inclusive and participatory. This will ensure objective reporting which is important for identifying gaps, real challenges of implementation so as to receive the support we need to achieve desired goals. |
| 17. | Para 10 at Pg. 43 (Monitoring and Evaluation) | <p>Communities should also be involved in monitoring and evaluation of the implementation of this policy. We propose an additional policy statement to this effect.</p> <p>The inclusion of a definite timeframe within which the progress of implementation will be evaluated is also key to the success of the policy.</p> | <p>Local communities, (forest indigenous communities) in particular have a rich knowledge and direct contact with forest and resources, and will be highly valuable in the Monitoring and Evaluation process. Working hand in hand with KFS, local communities should be allowed to use their rich Indigenous Knowledge to support the monitoring of forest trends, and where necessary be empowered to track key indicators and assess the process of effective conservation.</p> <p>Defined timeframes for monitoring and evaluation will also ensure that the relevant administrative institutions are held accountable for their commitments.</p> |
| 18. | Page 44 (Policy Review) | Besides stating the duration upon which the Policy will be reviewed, it is important to | The Policy review process is an extremely important process which the Ministry responsible for |

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| | | highlight the review process participants, (all forest stakeholder and related institutions), for clarity. | Forest must plan carefully, and the Policy should direct how the process is conducted and who is involved. |
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General Comments

- The document looks at Community participation in forest conservation as only influenced by the commercialization of forest resources. This has to be reviewed since indigenous communities relate to forests in a different way from those who practice farming or other forest product development. Indigenous communities conserve forests because of their ancestral attachments, their traditional lifestyles and spiritual rites. The policy therefore should be open to accommodate such distinct influencers of conservation which have been used to keep forests even before the coming of modern conservation agencies.
- Additionally, the existing participatory model through CFAs are not cognisant on the diversity of communities. There seems to be an assumption that all communities live adjacent to the forest. However, this policy acknowledges the water towers that are homes to indigenous communities which therefore raises the need to have a participatory model that is accepted and agreed to by these communities. It is important to note that these communities claim Community Lands in these forests as provided for by the Constitution of Kenya (Article 63 (2) (d) (ii)) and the Community Land Act 2016.
- The document is silent on the current speedy gazettement of more community lands and forest. The most recent was the conversion of the Awer/Boni forest to public land, communities have lost their control over their forests through such steps since colonial times. As indicated in the matrix above, the registration of such critical ecosystems as public lands do not protect them from degradation and destruction but rather create room for further forest loss by those who do not have a reason to take care of the forest. Those that would rather access and get out with resources for commercialization than take the responsibility to care.
- The document does not critically and adequately address the issue of the conflict of interest that Kenya Forest Service; the lead agency in management of protected forest, finds themselves in. It is evident that some of the systemic forest land grabs, logging and encroachment had been propagated by the KFS officials. A case in point (as noted in Daily Nation 28.06.2020) is the shrinkage of the Ngong Forest which was 7,231.6 acres as per the 1978 Legal Notice and has since shrank to 1330.3 acres with

influential political leaders and KFS top officials being responsible for the excisions. Besides the involvement of an independent body in Monitoring and Evaluation, we also recommend that the state of forests reports be prepared and published by an institution that is not directly involved in forest issues. This has yielded better output in countries like Brazil and India.

- The document generally views forests as a woodland unit consisting of plants (trees). However, there is need to consider other biotic components like the fauna, microorganisms and other abiotic factors in the development of Forest Policy, as they all function together and provide vital ecosystem services.